



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: August 11, 2009

Number: 200945068

Release Date: 11/6/2009

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.03-00, 501.03-05, 501.03-15

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: April 1, 2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A =
B =
C =
M =
X =
Y =
Z =
X =

UIL Numbers:

501.03-00
501.03-05
501.03-15

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Primary Issue

Do you qualify for exemption under section 501(c)(3) of the IRC? No, for the reasons described below.

Subordinate Issues

- 1) Have you established that the persons receiving or benefiting from your distributions in the foreign country of Y are in fact needy or otherwise deserving objects of charity? No, for the reasons described below.
- 2) Do you use proper control and discretion when distributing your funds in order for contributions to be deductible under 170 of the IRC? No, for the reasons described below.

3) Does your method of allowing an individual in the foreign country of Y to write checks to distribute the funds with no oversight or recordkeeping procedures create the potential for inurement, which would preclude you from qualifying for exemption under Section 501(c)(3) of the IRC? Yes, for the reasons described below.

Alternative Issue

If, upon appeal, you were found to qualify for exemption under IRC 501(c)(3), would you be a foreign conduit, which, while enjoying exemption from income tax, would not be eligible to receive tax deductible donations under IRC 170? Yes, for the reasons described below.

Facts

You were incorporated on date x, pursuant to the nonprofit corporation laws of the state of M. Your articles state that your purpose was to create and establish a charitable corporation to promote, foster and advance the programs and activities of Z, which is a foreign organization located in X. Your corporate name is Friends of Z.

As a part of your application for recognition of exemption you submitted a narrative description of activities which states that "the foreign organization did not cause our organization to be formed. It was formed independently". You went on to state that "our contributions are not earmarked for a foreign organization. They do not receive any funds from us." You also indicated that your purpose was to help the poor and needy students of Z. You indicated that you estimated the monthly living expenses for the average student to be approximately \$100 per month per student. You stated that you will give more aid to special cases. You said that students are given aid on a "first come first serve" basis and that you do not bypass any qualified student. You said that all students selected are reviewed and approved by your organization, but that you do not currently have a selection committee. Rather, you said that the students come from an open ended group and are not pre-selected. All funds are given to the individual recipients.

You also indicated that the student body of the foreign organization Z located in X is primarily from poor families. You said that they and their parents are without financial basis and that the foreign organization Z provides all their needs. Your criterion for assistance is that by providing living expenses they will not drop out and continue on through graduation. The students apply by contacting your organization.

You did not provide a list of board members with your initial application for exemption, however your Certificate of Incorporation listed three the names and addresses of three directors. We then asked for a list of the current members of the governing body and you verified they were as listed in your Certificate of Incorporation:

- a. A
- b. B
- c. C

The addresses provided indicated A was located in Y, B and C were in the United States.

In September, 2007 you indicated that each student receives \$250 US dollars per month. You also indicated that the funds are disbursed by your director, A who is located in Y.

When we asked about A's association with Z you indicated that he is the administrator and spiritual director of Z.

The stationery of Z shows your Employer Identification Number as their American Tax number.

You indicated that you are not involved in the day to day decisions as to whom Z accepts for study, and have no input as to which students receive stipends. You also indicated that the selection committee does not have available any minutes of their meetings.

As the terms "needy" and "poor" are subjective, we asked for you to provide any copies of documentation that is maintained to demonstrate that the students receiving stipends are actually needy. You indicated that the government of Y reviews the financial status of the students as living below the poverty level. You indicated that Z relies on this determination of needy by the government and that you uphold that decision.

Law

Section 501(a) of the Internal Revenue Code of 1986 provides for the exemption from federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized as exempt if they are organized and operated exclusively for religious, charitable, and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the Regulations defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the lessening of the burdens of government.

Section 170(a) of the Code provides, subject to certain limitations, a deduction for charitable contributions as defined in Section 170(c), payment of which is made within the taxable year.

Section 170(c)(2) of the Code defines a charitable contribution to include a contribution or gift to or for the use of a corporation, trust, or community chest, fund or foundation which is (A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States; (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals; (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and (D) which is not disqualified for tax exemption under § 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 170(c)(2) of the Code further provides that a contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of paragraph 170(c)(2) only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph 170(c)(2)(B).

Section 6001 of the Code states that "Notice or regulations requiring records, statements, and special returns," provides that every person liable for any tax imposed by this title (Title 26 of the United States Code, which is the Internal Revenue Code), or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

Section 1.6001-1(a) of the Procedure and Administration Regulations provides, in general, that any person subject to tax under subtitle A of the Code or any person required to file an information return with respect to income shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

Section 1.6001-1(c) of the regulations provides that for exempt organizations, in addition to such permanent books and records required by section 1.6001-1(a) with respect to the tax imposed by section 511 on the unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such

permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements.

Section 1.6001-1(e) of the regulations, Retention of records, provides that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Rev. Rul. 56-304, 1956-2 C.B. 306 states that an organization which otherwise meets the requirements for exemption from Federal income tax are not precluded from making distributions of their funds to individuals, provided such distributions are made on a true charitable basis in furtherance of the purposes for which they are organized. However, organizations of this character which make such distributions should maintain adequate records and case histories to show the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions made to individuals can be substantiated upon request by the Internal Revenue Service.

Rev. Rul. 63-252, 1963-2 C.B. 101, holds that contributions to certain domestic charitable organizations are deductible if it can be shown that the gift is, in fact, to or for the use of the domestic organization, and that the domestic organization is not serving as an agent for, or conduit of, a foreign charitable organization. In reaching this conclusion, the revenue ruling states that it seems clear that the requirements of section 170(c)(2)(A) of the Code would be nullified if contributions inevitably committed to go to a foreign organization were held to be deductible solely because, in the course of transmittal to the foreign organization, they came to rest momentarily in a qualifying domestic organization. In such cases, the domestic organization is only nominally the donee; the real donee is the ultimate foreign recipient.

Rev. Rul. 66-79, 1966-1 C.B. 48, amplifies Rev. Rul. 63-252 to provide that contributions to a domestic charity that are solicited for a specific project of a foreign charitable organization are deductible under section 170 of the Code if the domestic charity has reviewed and approved the project as being in furtherance of its own exempt purposes and has control and discretion as to the use of the contributions. This conclusion is reached because the contributions received by the domestic charity are regarded as for the use of the domestic organization and not the foreign organization receiving the grant from the domestic organization.

Rev. Rul. 68-489, 1968-2 C.B. 210, held that an organization will not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds and maintains records establishing that the funds were used for section 501(c)(3) purposes.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980). In an action for declaratory judgment pursuant to section 7428(a), the Tax Court considered an adverse ruling by the IRS on an application for exempt status as a church. The applicant had declined to furnish some information, and made answers to other inquiries that were vague and uninformative. On the basis of the record, the Court held that the applicant had not shown that no part of its net earnings inure to the benefit of the family or that petitioner was not operated for the private benefit.

New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of its application for exempt status. The court found that the administrative record supported the Service's denial on the basis that the organization operated for the private benefit of its founder, who had a history of promoting dubious schemes. The organization's petition claimed that the founder had resigned and it had changed. However, there was little evidence of change other than replacement of the founder with an acquaintance who had no apparent qualifications. The court resolved these questions against the petitioner, who had the burden of establishing it was qualified for exemption. If the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant".

In National Association of American Churches v. Commissioner, 82 T.C. 18 (1984), the court denied a petition for declaratory judgment that the organization qualified for exempt status as a church. In addition to evidence of a pattern of tax-avoidance in its operations, the court noted that the organization had failed to respond completely and candidly to IRS during administrative processing of its application for exemption. An organization may not declare what information or questions are relevant in a determination process. It cited a number of declaratory relief actions that upheld adverse rulings by the Service because of the failure of the applicants to provide full and complete information on which the Service could make an informed decision.

In United States v. Wells Fargo Bank, 485 U.S. 351, 108 S. Ct. 1179, 99 L. Ed. 2d 368 (1990) the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In Church in Boston v. Commissioner, 71 T.C. 102 (1978) the court found that the organization's officers received amounts of money in the form of "grants." These grants carried with them no legal obligation to repay any interest or principal. Petitioner contended, as it had during the administrative proceeding before the IRS, that the grants were made in furtherance of a charitable purpose: to assist the poor who were in need of food, clothing, shelter, and medical attention. However, petitioner was unable to furnish any documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The only documentation contained in the administrative record was a list of grants made during one of the three years in question which included the name of the recipient, the amount

of the grant, and the "reason" for the grant which was specified as either unemployment, moving expenses, scholarship, or medical expense. This information was insufficient in determining whether the grants were made in an objective and nondiscriminatory manner and whether the distribution of such grants was made in furtherance of an exempt purpose. The failure to develop criteria for "grant" disbursements or to keep adequate records of each recipient can result in abuse. Accordingly it was found that the organization failed to establish that their disbursements constituted an activity in furtherance of an exempt purpose.

Western Catholic Church v. Commissioner of Internal Revenue, 73 T.C. 196 (1980). The petitioner's only activities were some individual counseling and distribution of a few grants to needy individuals, while its primary activity was investment of funds. The directors borrowed money in its name, but used some of it for automobiles and to pay off personal loans. The petitioner's failure to keep adequate records and its manner of operation made it impossible to trace the money completely, but the court found it clear that money passed back and forth between petitioner and its director and his for-profit businesses. The Court held that petitioner had not shown it was operated exclusively for exempt purposes or that no part of its earnings inured to the benefit of its officer.

In Rameses School of San Antonio, Texas v. Commissioner of Internal Revenue, T.C. Memo. 2007-85, 2007 WL 1061871 (U.S. Tax Ct. 2007) the court held that IRS properly revoked the exempt status under section 501(c)(3) of the Code of a school on the grounds that its earnings inured to the benefit of its founder, who also served as its executive director, president, and CEO. The record showed that the founder issued numerous organization checks to herself and withdrew cash from organization accounts for which the record showed no documented business purpose. Neither did the organization's records show that there was any documented system for either loans to and repayments for loans by the founder and reimbursements from the school.

Application of Law

Section 6001 of the Code requires organizations exempt from tax to retain records sufficient to detail their exempt function activities. To qualify for exempt status an organization must make a convincing case that they qualify for tax exempt status under Code section 501(c)(3). Section 501(c)(3) of the IRC provides for the exemption from federal income tax for organizations described in if they are organized and operated exclusively for religious, charitable, and educational purposes. An organization that is unable to demonstrate they have now or will have in the future sufficient records to show operations exclusively further exempt purposes will not be found to meet the operational test under Section 501(c)(3) of the Code. In New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006) the court explains that the burden is on the applicant to establish that it meets the statutory requirement under Section 501(c)(3) of the IRC. An organization is entitled to federal tax exemption only if, inter alia, it is organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. Failure to satisfy any of these requirements results in an organization being disqualified from tax exemption.

You have provided very little information regarding how you operate. You allow the foreign government of Y to make the determination as to whether a student is classified as needy. Your only board member that is involved with the day to day operations of

your organization is also a director of the foreign organization Z. The criterion for your grants were not clear, and you provided contradictory information regarding the amounts of the grants. The procedures that you described for distribution of money to the students also lacked transparency. Where you claim ignorance, are silent, or provide vague and general responses when specific detailed answers are required results in a mere theoretical proposition supporting exemption that is insufficient to clearly demonstrate that you meet the requirements for tax exempt status under Section 501(c)(3) of the IRC.

Where you have explained how you operate your programs you describe that you have delegated much of your authority, responsibility, and operations to foreign individuals and entities. You allow the foreign organization Z located in X to make the determination regarding who is eligible for your assistance and to keep the records regarding the students to whom you give stipends. Although you indicated in your application that you were formed independently of the foreign organization, you included the director of the foreign organization on your board, and the other directors have no control over the operation of your programs.

To be exempt under Section 501(c)(3), an organization must be both organized and operated for one or more exempt purposes specified in the Section. Although "exclusively" does not mean "solely" or "without exception," the presence of a single nonexempt purpose, if substantial, will preclude exemption regardless of the number or importance of exempt purposes, as indicated in Better Business Bureau, Easter House, supra. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more purposes specified in Section 501(c)(3). Neither is an organization operated exclusively for one or more exempt purposes if its net earnings inure to the benefit of private shareholders or individuals, or its activities further private rather than public interests.

As stated in New Dynamics, supra, exemption from federal income taxation is not a right; it is a matter of legislative grace that is strictly construed. The applicant bears the burden of establishing that it qualifies for exempt status. An applicant must prove that it is organized and operated exclusively for exempt purposes and not for the private benefit of its creators, designated individuals or organizations controlled by such private interests, as in Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. Again, exclusively does not mean "solely," but no more than an insubstantial part of an organization's activities may further a non-exempt purpose.

An applicant for exempt status must provide sufficient information for the IRS to make an informed decision as indicated in National Association of American Churches, supra. It must respond to questions completely and candidly. You did not respond openly and candidly to many of our questions. As in Basic Bible Church, supra, the responses must include details, figures, and documentation. You did not provide adequate details regarding the method of selecting the students that receive stipends, the manner in which the money was handled and dispersed, and provided contradicting statements regarding the specific amounts of cash that was given to each of the students. As in Bubbling Well Church, supra, you have given answers to our inquiries that were vague and uninformative. Accordingly, we can not determine that you are not operated for the private benefit of individuals in the United States and the foreign of X that you have allowed to control your finances.

In contrast to the broad generality of the purposes stated in your charter, the name of your corporation suggests a purpose to assist a named foreign organization. Article II, Section B of your Bylaws stated that the purpose of your organization is to support poor students with living expenses attending the programs of the foreign organization Z. You stated that the individuals who organized your corporation had become interested in furthering the work of the named foreign organization by assisting students attending the foreign organization Z. You purport that you do not give money to the foreign organization, but rather, you give cash to needy students attending the foreign organization Z located in X. However, the disbursements to the students are made from the checking account of foreign organization Z.

You indicated that you support only needy students while they attend a particular foreign religious school Z. However, you do not seek applications or specific financial documentation from the students. Because you require no documentation to verify the financial status of the student, nor do you require an application, you do not meet the operational test of Section 501(c)(3) of the Code which requires that you operate exclusively for exempt purposes.

Rev. Rul. 56-304, 1956-2 C.B. 306 states that if an organization gives money to individuals in need, they must keep adequate records. These records must include the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions made to individuals can be substantiated upon request by the Internal Revenue Service. You do not keep adequate records. You allow the foreign organization Z to select the recipients and keep the records.

Rev. Rul. 63-252 states that contributions to certain domestic charitable organizations are deductible if it can be shown that the gift is for the use of the domestic organization, and the domestic organization is not serving as an agent for the foreign organization. Your organization appears to have little or no control over who receives the cash, or how much they receive. Foreign organization Z uses your EIN as their "American Tax No." indicating that your organization is a fundraising arm in the United States for the programs of foreign organization Z. Your organization does not appear to have control and discretion over the use of the funds.

As in Harding Hospital, Inc. v. United States, *supra*, you have the burden of proving that you satisfy the requirements of the Code. You have failed to provide enough information to prove to us that you are operating in a manner that would allow for you to qualify for exemption under Section 501(c)(3) of the IRC.

In Western Catholic Church v. Commissioner, *supra*, the Court held that because of the petitioner's failure to keep adequate records and its manner of operation made it impossible to trace the money completely, the petitioner had not shown it was operated exclusively for exempt purposes or that no part of its earnings inured to the benefit of its officer. Also, the Court held that the IRS properly revoked the exempt status in Rameses School of San Antonio, Texas v. Commissioner, *supra*, under section 501(c)(3) of the Code on the grounds that its earnings inured to the benefit of its founder. The record showed that the founder issued numerous organization checks to herself and

withdrew cash from organization accounts for which the record showed no documented business purpose. You do not maintain sufficient control over the disbursement of your funds to demonstrate they are used exclusively for exempt purposes and not inuring to the benefit of any individual.

Applicant's Position

You state that Z was created by a group of like-minded people who share similar ideals and support for the same types of causes., and that the organization was created to assist poverty-stricken people in the country of Y, yet enabling the individual donors in the U.S. to join together and, as a group, have control over the distribution of their funds while, at the same time, be a power bloc in directing and guiding the institutions they were supporting.

You indicated that on a larger scale, the individuals in the U.S. wanted to ensure accountability and financial responsibility, but at the same time wanted to make sure that you could trust them to review the specific students who would participate in the programs you fund. You established a policy that would enable you to uphold the criteria and standards used by the government of Y to determine "need based", and to also have some reliance on the government of Y for general oversight of the institution.

You stated that you require ongoing communications with the institution to ensure that they understand their requirement to abide by your standards and they know that their failure to properly disperse of the funds you send could lose them all the support you offer. Also the supporters and U.S. based members could, at any time, visit their facilities during trips to Y, or send representatives to spot check the books and financial records which must be made available at any given time.

Service's Response to the Applicant's Position

The foreign organization that you support is also the one responsible for keeping records to verify qualification for the stipend. Contrary to what you say, you do not keep adequate records, as all funds expended are by the foreign organization Z. Although you indicate that foreign organization Z is subject to spot checks of their records, since you do not require, or have on file, an application and do not verify that the recipients are needy, a spot check of the financial records cannot verify that the funds are used for exempt purposes. It also appears that there is little or no control to ensure that funds do not benefit private interests.

Primary Conclusion

Based on the above facts and law, we conclude that you do not qualify for exemption under section 501(c)(3) of the IRC.

Conclusion Regarding Subordinate Issues

1) You were formed to provide stipends to needy students of the foreign organization Z located in X. However, you do not request an application, keep records or verify that the recipients are "needy". You allow a foreign organization to select the recipients and

keep the required records, and you allow a foreign government to determine that the recipients are needy. You are not operating in a manner that would allow for you to qualify for exemption under Section 501(c)(3) of the IRC.

2) Section 501(c)(3) of the IRC requires that you have in place a system for proper control and discretion when distributing funds to individuals. You do not keep adequate records as required by the Code, Regulations, Revenue Rulings and Court Cases cited above. Section 6001 of the Code requires organizations exempt from tax to retain records sufficient to detail their exempt activities. You have failed to provide relevant information. This is sufficient basis for both the Service and the Courts to refuse to recognize the organization as exempt under section 501(c)(3) of the IRC.

3) You allow an individual located in the foreign country of Y, who you indicated is a board member, to exercise all control over your funds and personally distribute funds to the students of the foreign organization Z, with no oversight of the individual or record keeping procedures regarding your cash disbursements. You have no controls in place to eliminate the potential for inurement. Therefore, you have not established that you are operated exclusively in furtherance of section 501(c)(3) purposes.

Conclusion Regarding the Alternative Issue

If you were found to qualify for tax exempt status under IRC 501(c)(3), you would meet the definition of a foreign conduit, which, while enjoying exemption from income tax, would not be eligible to receive tax deductible donations under IRC 170. Your decisions are not independent or solely within your jurisdiction with regard to the disposition of the funds donated to you, as you let the supported foreign organization control and dispense funds. There is no distinction between your funds and the funds of Z, who makes all decisions regarding the use of funds and all disbursements. The requirements of section 170(c)(2)(A) of the Code are nullified if contributions inevitably committed to go to a foreign organization, or components thereof, were held to be deductible solely because, in the course of transmittal to the foreign organization, they came to rest momentarily in a qualifying domestic organization. In such cases, the domestic organization is only nominally the donee; the real donee is the ultimate foreign recipient. As the name of your organization implies, you were formed to support foreign organization Z. You seek contributions in the United States. You momentarily hold the contributions, but the ultimate purpose is to support the foreign organization. You are only nominally the donee. The real donee is foreign organization Z. Because you do not review and approve the disbursements and because you do not maintain control and discretion over the use of the funds you receive, you are not considered the recipient of the funds. Therefore, the requirements of section 170(c)(2)(A) of the Code are nullified and contributions to your organization are not deductible.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations, Group 7830
Room 4-504
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations, Group 7830
550 Main Street, Room 4-504
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements